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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/704,028	11/01/2000	Gary G. Lenihan	060545/0456	2436

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EXAMINER

MILLER, BENA B

ART UNIT	PAPER NUMBER
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3712

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/704,028	Applicant(s) LENIHAN, GARY G.	
	Examiner Bena Miller	Art Unit 3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6,10-14,16,17 and 21 is/are pending in the application.
 4a) Of the above claim(s) 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6,11-14,16,17 and 21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 is vague and indefinite because the claim recites "the island"; however, claim 1 recites a toy kitchen in the preamble of the claim. The specific structure of the claim intended to be encompassed is not clear. In this Office Action, the examiner considers the claim to recite only intended use of the claimed apparatus. Further, claim 11, depends from itself.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 11-14, 16 17 and 21 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Klein.

Regarding claims 1 and 21, Klein teaches in figures 1-11 a toy kitchen having a main unit (marked copy fig. 9 and fig. 10 and 11), a repositionable island removably coupled to the front surface of the main unit (marked copy fig. 9; note, element figure 5

coupled the repositionable island to the front surface of the main unit) and the repositionable island is perpendicular to the front surface of the main unit (marked copy figure 9). It should be noted that applicant did not define a front surface in reference to the main unit.

Regarding claim 2, Klein further teaches the repositionable island removably coupled to the second side wall in figure 11.

Regarding claim 3, Klein further teaches a stove top main unit and a countertop island in figure 9.

Regarding claim 6, as best as understood, Klein further teaches the island is removably connected to the left side of the main unit in figure 11.

Regarding claim 11, as best as understood, Klein further teaches a stove top in figure 9.

Regarding claim 12, Klein teaches in figures 1-11 a toy kitchen having a first unit extending along a first vertical longitudinal plane (fig. 9), at least one removable and repositionable second unit extending along a second vertical longitudinal plane and position perpendicular (fig. 9), the second unit is removably connected to the front surface of the first unit (fig.9) in a first position and in a second position the first and second longitudinal planes are substantially coplanar (fig. 11).

Regarding claim 13, Klein further teaches the first and second play areas are partially bounded by one side of the first unit and second unit (marked copy fig. 9) and the second position defines a continuous play area extending along one side of the first and second units in figure 11.

Regarding claim 14, Klein further teaches a main unit and an island in figures 9 and 11.

Regarding claim 16, Klein further teaches a stove top first unit and a cabinet second unit in figures 9 and 11.

Regarding claim 17, Klein further teaches the first unit removably positioned to the second unit in a first position as seen in figures 9 and 11.

Allowable Subject Matter

Claim 9 is allowable.

Response to Arguments

Applicant's arguments filed 03/09/04 have been fully considered but they are not persuasive. In response to applicant's arguments that Klein fails to teach the repositionable island extends outwardly from the front surface of the main unit and the repositionable island is positioned perpendicular to the main unit. It should be noted applicant fails to define a front surface of the main unit; therefore, the examiner has defined the front surface of the main unit disclosed in the marked up copy figure 9 of Klein.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "the second unit not extending outwardly from the main unit so that it is oriented perpendicular to the front surface of the main unit) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from

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the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that a child would not be able to use the components of the main unit of Klein patent if the module are place in front of the components of the main unit, the examiner disagrees. As noted above, applicant fails to define the front surface of the main unit; therefore, the front surface, as defined by the examiner, in the Klein reference meets the limitation of the claimed invention.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643. The examiner can normally be reached on Monday-Friday.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Bena Miller
Examiner
Art Unit 3712

bbm
April 16,2004